

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 98-0260 RST**

**Registration Fees — Aircraft
Use and Excise Taxes — Aircraft
Tax Administration — Penalty
For Tax Periods: 1993 through 1997**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Registration Fees — Aircraft

Authority: IC 6-6-6.5-2; IC 6-6-6.5-3; IC 6-6-6.5-9

Taxpayer protests the proposed assessment of Indiana use tax on its purchase of eight (8) airplanes.

II. Excise Tax — Aircraft

Authority: IC 6-6-6.5-1; IC 6-6-6.5-12

Taxpayer protests imposition of Indiana excise tax on eight (8) of its airplanes.

III. Use Tax — Aircraft

Authority: IC 6-2.5-3-2; IC 6-2.5-8-8; IC 6-3-1-19; IC 6-3-4-10

Taxpayer protests imposition of Indiana registration fees on eight (8) of its airplanes.

IV. Tax Administration — Penalty

Authority: IC 6-6-6.5-19; IC 6-8-10-2.1;

Taxpayer protests the imposition of penalties on its failure to remit Indiana excise and use taxes, and on its failure to register its airplanes in Indiana.

STATEMENT OF FACTS

A non-resident corporation ("taxpayer") purchased eight (8) airplanes from various out-of-state sellers. These airplanes were purchased in 1993, 1994, and 1995 for subsequent resale. According to taxpayer, the airplanes represented the inventory of a joint venture between taxpayer and an Indiana partner. The purpose of this joint venture was to purchase, restore, and resell airplanes for profit. Taxpayer's Indiana partner, an Indiana registered retail merchant, serviced and restored the airplanes as well as assisted taxpayer in procuring sellers and buyers. As taxpayer provided the money for the purchase and restoration activities, the airplanes were titled in taxpayer's name and remained so until the airplanes were eventually resold.

All eight (8) airplanes were purchased from out-of-state sellers and eventually sold to out-of-state buyers. However, prior to resell, once taxpayer obtained title to the airplanes they were brought into Indiana for repair and restoration and remained in Indiana until they were resold. The airplanes resided in Indiana anywhere from six (6) to twenty-six (26) months. Profits from the sales were divided between taxpayer and its Indiana partner (collectively referred to as the "co-venturers"). From these facts, the Aeronautics Division ("Aeronautics") of the Indiana Department of Revenue ("Department") proposed assessments against taxpayer for unpaid registration fees, excise taxes, use taxes, penalties, as well as interest. Taxpayer now protests these assessments.

Specifically, this protest involves four issues: (1) taxpayer's failure to register its airplanes in Indiana; (2) nonpayment of Indiana's annual license excise taxes; (3) assessment of use tax on the taxpayer's acquisition of the eight (8) airplanes; and (4) imposition of penalties.

I. Registration Fees — Aircraft

DISCUSSION

According to the Aeronautics Division, taxpayer failed to register eight (8) airplanes that were acquired from 1993 through 1995. While taxpayer, an out-of-state buyer, purchased these

airplanes from out-of-state sellers, the airplanes were physically located (i.e., based) in Indiana. From Aeronautics perspective, taxpayer should have annually registered its airplanes in Indiana. Taxpayer, however, failed to do so. Therefore, Aeronautics proposed assessments for collection of these delinquent registration fees.

Taxpayer failed to advance arguments or submit any evidence supporting its protest of the assessment of registration fees (and, of course, its obligation to register the airplanes in Indiana) for the years in which the airplanes were based in Indiana.

Owners of Indiana based aircraft must apply annually for a certificate of registration. (See IC 6-6-6.5-2 through IC 6-6-6.5-5.) Specifically, IC 6-6-6.5-2 states that “any nonresident who bases an aircraft in this state for more than sixty (60) days, shall register the aircraft with the department under this chapter.” Additionally, IC 6-6-6.5-3(a) instructs in part:

Any resident of this state who owns an aircraft, and any nonresident who bases an aircraft in this state for more than sixty days, which is not exempt from registration under section 9 of this chapter shall apply to the department for a certificate of registration for such aircraft. (Emphasis added.)

The facts presented indicate that the airplanes were based in Indiana for a period exceeding sixty (60) days. Furthermore, taxpayer does not qualify for any of the exemptions from registration that are listed in IC 6-6-6.5-9. Consequently, the Department concludes that when taxpayer elected to base its airplanes in Indiana for periods exceeding sixty (60) days, taxpayer acquired the legal obligation to annually register its airplanes in Indiana and to remit all appropriate registration fees.

FINDING

Taxpayer's protest is denied.

II. Excise Tax — Aircraft

DISCUSSION

The Department concluded (see Issue I) that taxpayer was legally required to register its airplanes in Indiana. Concomitant with the registration requirement is a responsibility to remit annually the license excise tax. As IC 6-6-6.5-12 informs:

Effective January 1, 1976, there is hereby imposed an annual license excise tax upon *taxable aircraft*, which tax shall be in lieu of the ad valorem property tax levied for state or local purposes... (Emphasis added.)

“Taxable aircraft” is defined in IC 6-6-6.5-1 as “an aircraft required to be registered with the department by this chapter. Logically it follows that since taxpayer was required to register its aircraft with the Department, taxpayer must also remit annually the license excise taxes for its airplanes.

FINDING

Taxpayer’s protest is denied.

III. Use Tax — Aircraft

DISCUSSION

Taxpayer purchased eight (8) airplanes from out-of-state sellers. The airplanes, according to taxpayer, were sent to Indiana for restoration and eventual resale. Since the nonresident taxpayer’s airplanes were based in Indiana for a period exceeding sixty (60) days, taxpayer, a nonresident, acquired the legal obligation to register its airplanes with the state of Indiana and pay registration fees and excise taxes—absent, of course, the availability of any exemptions. (See IC 6-6-6.5-2 and IC 6-6-6.5-12.) Additionally, according to Aeronautics, taxpayer should have remitted to Indiana use tax based on the purchase price of these airplanes.

Taxpayer does not contest Audit’s observations that taxpayer purchased eight (8) airplanes and subsequently brought them into Indiana for extended periods of time. Taxpayer informs the Department that the airplanes were brought into Indiana because taxpayer and an Indiana partner were engaged in a joint venture for the specific purpose of buying, restoring, and selling specific types of aircraft. The parties eventually reduced their agreement to writing on April 15, 1995. Consequently, taxpayer reasons that its Indiana partner was acting as taxpayer’s agent (i.e., a partner in the joint venture) when purchasing, restoring, and reselling these airplanes. (*Note: the Indiana partner was an Indiana registered retail merchant.*)

Taxpayer posits the following argument in support of its belief that these airplanes should not be subject to Indiana sales or use taxes. Taxpayer notes that pursuant to IC 6-2.5-3-4 and IC 6-2.5-8 “transactions involving tangible personal property are exempt [from] sales and use tax if the property was purchased for, among other things, resale...[And as] the only ultimate purpose for the acquisition of the subject aircraft were for their resale...the aircraft are not subject to

Taxpayer's argument is based on the fact that its Indiana partner (i.e., the co-venturer), an Indiana registered retail merchant, possessed valid resale exemption certificates at the time these aircraft were purchased. And since these purchases were incurred in furtherance of the purpose of the joint venture (i.e, the purchase, restoration, and resale of airplanes), the resale certificates possessed by its Indiana partner also were valid for taxpayer – **even though the airplanes were titled in the name of taxpayer and not in the name of either the joint venture or the co-venturer.**

Taxpayer summarizes its position as follows:

[T]he joint-venture partner [the Indiana partner] was a[n] [Indiana] registered retail merchant. Indiana law is quite clear that [c]o-venturers are agent[s] of each other as to third parties. Acts of one are essentially acts of the other. *Boyer v. First Nat'l Bank of Kokomo* (Ind App 4 Dist 1985), 476 NE2d 895. In this case, the ultimate purpose of the joint venture was to buy and sell aircraft. Therefore, the acts of either co-venturer in buying and selling must be construed as an act of the other. Since the joint-venture partner [the Indiana partner] held a resale certificate, both partners when conducting transactions in furtherance of the joint venture (buying and selling aircraft) were in effect acting under that certificate, and thus such transactions are exempt [from Indiana] sales and use taxes.

In other words, the airplanes were not brought into Indiana for any taxable consumer use, but rather, for restoration and subsequent resale – i.e., for exempt uses.

In Indiana, an excise tax (sales tax) is imposed on retail transactions. A complementary excise tax (use tax) is imposed on tangible personal property that is stored, used, or consumed in this state.

Generally, use tax "is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." IC 6-2.5-3-2(a). Additionally, with regard to aircraft, use tax must be remitted if the aircraft is acquired in an isolated or occasional sale. As IC 6-2.5-3-2(b) instructs:

The use tax is also imposed on the storage, use, or consumption of a vehicle, an aircraft, or a watercraft, if the vehicle, aircraft, or watercraft:

- (1) is acquired in a transaction that is an isolated or occasional sale; and

(2) is required to be titled, licensed, or registered by this state for use in Indiana.

Bottom line: absent the applicability of any credits, exclusions, or exemptions, use tax must be remitted for aircraft acquired in a sales transaction – *regardless of whether the sale is characterized as retail, isolated, or occasional.*

An aircraft owner may not register its aircraft with the state of Indiana unless the person obtaining the registration “presents proper evidence, prescribed by the department, **showing that the state gross retail and use taxes imposed in respect to the ...aircraft have been paid or that the state gross retail and use taxes are inapplicable because of an exemption.**” IC 6-2.5-9-6(a)(1). (Emphasis added.) Taxpayer has chosen the latter option.

To wit, taxpayer relied on IC 6-2.5-8-8(a) which states in part:

A person authorized under subsection (b) [i.e., retail merchants, wholesalers, and manufacturers **who are registered with the department**], who makes a purchase in a transaction which is exempt from the state gross retail and uses taxes, may issue an exemption certificate to the seller instead of paying the tax. (Emphasis added.)

Taxpayer stated that it was engaged in a joint venture with its Indiana partner as early as September of 1993 – a date preceding the *first* airplane’s purchase. The Department notes, however, that the joint venture agreement was not formalized in writing until April 15, 1995 – a date subsequent to the *last* airplane’s purchase. But even assuming *arguendo* that a joint venture agreement did exist between taxpayer and its Indiana partner prior to the time in which the airplanes were purchased and the agreement formalized, **taxpayer may not invoke its Indiana partner’s registered retail merchant status (and the subsequent issuance of retail exemption certificates by its Indiana partner) in order to qualify for an exemption from sales and use taxes on behalf of either itself or the joint venture.**

Furthermore, on the income side, IC 6-3-4-10 discusses the necessity of filing Indiana partnership returns.

Every partnership doing business in this state, every partnership any partner of which is a resident, and every partnership which has gross income derived from sources within this state, shall make a return for each taxable year on a form prescribed by the department [Form IT-65], which return shall correspond with the returns required by Section 6031 of the Internal Revenue Code, insofar as consistent with the provisions of this article...

Partnership is defined in IC 6-3-1-19(a) as follows:

The term “partnership” includes a syndicate, group, pool, *joint venture*, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this chapter, a corporation or a trust or an estate... (Emphasis added.)

The Department has no record of such state income tax filings or retail merchant registrations submitted on behalf of the joint venture. To summarize, since the joint venture is not registered as an Indiana retail merchant, and neither is taxpayer, taxpayer can not issue a retail merchant exemption certificate in either its name or in the name of the joint venture. Consequently, taxpayer owes use tax on its acquisition of the eight (8) airplanes.

FINDING

Taxpayer's protest is denied.

IV. Tax Administration — Penalty

DISCUSSION

Taxpayer protests the imposition of penalties for its failure to timely remit use and excise taxes on its acquisition of eight (8) airplanes in 1993, 1994, and 1995.

IC 6-6-6.5-19 imposes a penalty of "the greater of twenty dollars (\$20) or twenty percent (20%) of the unpaid [annual license excise] tax." This penalty was imposed because taxpayer failed to register any of its airplanes with the state of Indiana. Additionally, pursuant to IC 6-8.1-10-2.1(e), a ten percent (10%) penalty was imposed (as measured by the amount of use tax due) because taxpayer failed to remit any use tax on its purchase of the airplanes from out-of-state sellers.

Taxpayer has not established a reasonable cause supporting its failure to timely remit these excise and use taxes. The Department, therefore, finds that the assessment these of penalties is appropriate.

FINDING

Taxpayer's protest is denied.